



SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: DNA ENCODING METHYMYCIN AND PIKROMYCIN.

The specification of which was filed on November 19, 2001 as application serial no. 09/988,384 and was amended on November 19, 2001.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. §1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

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Application Number
PCT/US99/14398

Filing Date
June 25, 1999

Status
Pending

Attorney Docket No. 600,536/51
 Serial No. 09/988,384
 Filing Date, November 19, 2001

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Greaves, John N.	Reg. No. 46,362	Nelson, Albin J.	Reg. No. 28,550
Aronoff, Marvin S.	Reg. No. 35,052	Heack, John L.	Reg. No. 36,154	Nicholson, Lee A.	Reg. No. 48,246
Arona, Susan	Reg. No. 42,267	Harris, Robert J.	Reg. No. 37,346	Nielsen, Walter W.	Reg. No. 25,539
Beckman, Marvin L.	Reg. No. 38,377	Jackson Huibach, Katharine A.	Reg. No. 47,670	Pudys, Danny J.	Reg. No. 35,635
Berdie, Raymond R.	Reg. No. P-90,749	Jurkovich, Patti L.	Reg. No. 44,813	Parker, J. Kevin	Reg. No. 33,024
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Chadwick, Robin A.	Reg. No. 36,477	LeMoine, Dana B.	Reg. No. 40,062	Schwegman, Michael L.	Reg. No. 25,816
Clark, Barbara J.	Reg. No. 38,197	Lundberg, Steven W.	Reg. No. 30,568	Scott, John C.	Reg. No. 38,613
Chise, Timothy B.	Reg. No. 40,957	Maki, Peter C.	Reg. No. 42,832	Smith, Michael G.	Reg. No. 45,368
Cochran, David R.	Reg. No. 46,632	Makara, Peter L.	Reg. No. 44,804	Speller, Gary J.	Reg. No. 45,458
Dahl, John M.	Reg. No. 44,659	Mates, Robert F.	Reg. No. 35,271	Steffey, Charles E.	Reg. No. 25,179
Danks, Eduardo T.	Reg. No. 40,594	McCrackin, Ann M.	Reg. No. 42,858	Stordal, Leif T.	Reg. No. 46,251
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Ferrari, Bradley A.	Reg. No. 30,837	Mehrle, Joseph P.	Reg. No. 45,535	Tong, Vini V.	Reg. No. 45,416
Gundak, Owen J.	Reg. No. 36,143	Moore, Charles L., Jr.	Reg. No. 33,744	Vikshus, Ann S.	Reg. No. 37,748
Gornic, Gregory J.	Reg. No. 36,530	Mueller, Mark V.	Reg. No. 37,509	Woessner, Warren D.	Reg. No. 30,440
Gorych, Joseph E.	Reg. No. 41,791	Namu, Kashi	Reg. No. 44,255		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/went this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402

Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1: David H. Sherman

Citizenship: United States of America

Residence: St. Louis Park, MN

Post Office Address: 2248 Drew Avenue South
St. Louis Park, MN 55416

Signature: David H. Sherman
 David H. Sherman

Date: 02/25/2002

Full Name of joint inventor number 2: Hung-Wen Liu

Citizenship: United States of America

Residence: Austin, TX

Post Office Address: 7130 Las Ventanas Drive
Austin, TX 78731

Signature: Hung-Wen Liu

Date: _____

X Additional inventors are being named on separately numbered sheets, attached hereto.

Attorney Docket No.: 600,536US1

Serial No. 09/988,384

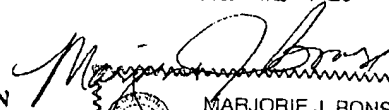
Page 3 of 4

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Full Name of joint inventor number 3: Yongquan XueCitizenship: China

Post Office Address:

ChinaResidence: St. Paul, MN1261 Eifield Place5678 Deer Trail WestSt. Paul, MN 55108Shoreview, MN 55126Signature: Yongquan XueDate: 2/26/02MARJORIE J. BONSE
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES 1-31-2005Full Name of joint inventor number 4: Lishan ZhaoCitizenship: China

Post Office Address:

ChinaResidence: Carlsbad, CA6564 Red Knot St.Carlsbad, CA 92009Signature: Lishan Zhao

Date: _____

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§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

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Full Name of joint inventor number 1 : **David H. Sherman**
Citizenship: **United States of America** Residence: **St. Louis Park, MN**
Post Office Address: **2248 Drew Avenue South**
St. Louis Park, MN 55416

Signature: _____ Date: _____
David H. Sherman

Full Name of joint inventor number 2 : **Hung-Wen Liu**
Citizenship: **United States of America** Residence: **Austin, TX**
Post Office Address: **7130 Las Ventanas Drive**
Austin, TX 78731

Signature: _____ Date: _____
Hung-Wen Liu

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Full Name of joint inventor number 3 : Yongquan Xue

Citizenship: China

Residence: St. Paul, MN

Post Office Address: 1261 Fifield Place
St. Paul, MN 55108

Signature: _____

Yongquan Xue

Date: _____

Full Name of joint inventor number 4 : Lishan Zhao

Citizenship: China

Residence: Carlsbad, CA

Post Office Address: 6564 Red Knot St.
Carlsbad, CA 92009

Signature: _____

Lishan Zhao

Date: 2/12/02

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Attorney Docket No.600.536US1

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United States Patent Application
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Gorrie, Gregory J.	Reg. No. 36,530	Muller, Mark V.	Reg. No. 37,509	Woessner, Warren D.	Reg. No. 30,440
Gortych, Joseph E.	Reg. No. 41,791	Nama, Kash	Reg. No. 44,255		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402

Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1: David H. Sherman

Citizenship: United States of America

Residence: St. Louis Park, MN

Post Office Address: 2248 Drew Avenue South
St. Louis Park, MN 55416

Signature: _____

David H. Sherman

Date: _____

Full Name of joint inventor number 2: Hung-Wen Liu

Citizenship: United States of America

Residence: Austin, TX

Post Office Address: 7130 Las Ventanas Drive
Austin, TX 78731

Signature: _____

Hung-Wen Liu

Date: 2/25/2002

☒ Additional inventors are being named on separately numbered sheets, attached hereto.

Attorney Docket No.: 600.536US1

Serial No. 09/988,384

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Filing Date: November 19, 2001

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 3 : Yongquan XueCitizenship: ChinaResidence: St. Paul, MNPost Office Address: 1261 Fifield Place
St. Paul, MN 55108

Signature: _____

Yongquan Xue

Date: _____

Full Name of joint inventor number 4 : Lishan ZhaoCitizenship: ChinaResidence: Carlsbad, CAPost Office Address: 6564 Red Knot St.
Carlsbad, CA 92009

Signature: _____

Lishan Zhao

Date: _____

Attorney Docket No.: 600.536US1

Serial No. 09/988,384

Filing Date: November 19, 2001

Page 4 of 4

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.